

TTAB

Attorney Docket No. 021909-005901US

CERTIFICATE OF MAILING

Date of Deposit: March 27, 2006

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

TOWNSEND and TOWNSEND and CREW LLP

By: Eddie Shine  
Eddie Shine

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 1,489,345

73680820

For: **TERRAIN**

Issued: May 24, 1988

OCEANSIDE GLASSTILE COMPANY,

Petitioner,

v.

SUMMITVILLE TILES, INC.,

Registrant.

Cancellation No. \_\_\_\_\_

PETITION TO CANCEL

Commissioner for Trademarks  
P. O. Box 1451  
Alexandria, VA 22313-1451

Madam:

Upon information and belief, on May 24, 1988, Registrant Summitville Tiles, Inc., a Delaware corporation, with a mailing address of Post Office Box 73 S.R. 644, Summitville, Ohio 43962 ("Registrant") was issued Trademark Registration No. 1,489,345 for the mark **TERRAIN** for "ceramic tiles for floors and walls" in International Class 19 based on Registrant's application for said mark filed on August 27, 1987 ("Registrant's Mark").



03-30-2006

U.S. Patent & TMO/TM Mail Rcpt Dt. #72

Petitioner Oceanside Glasstile Company, a California corporation, with offices at 2293 Cosmos Court, Carlsbad, California 92009 ("Petitioner") claims that it will be damaged by the continued registration of Registrant's Mark, and hereby Petitions for Cancellation of Registration No. 1,489,345. As grounds therefore, Petitioner alleges the following:

1. On April 19, 2005, Petitioner filed Application Serial No. 78/611,948 to register Petitioner's mark **TERRAIN** in the United States Patent and Trademark Office based on Petitioner's intent to use the mark for "glass tiles for commercial and residential use on walls, floors, ceilings, and other surfaces" in International Class 19 ("Petitioner's Application").

2. Registrant's Registration No. 1,489,345 has been relied upon by the Examining Attorney to refuse registration of Petitioner's Application under Section 2(d) of the Trademark Act on the contended grounds that the **TERRAIN** mark, when applied to Petitioner's goods, so resembles the Registrant's Mark as to be likely to cause confusion, to cause mistake, or to deceive.

3. Upon information and belief, Registrant is not using, and has not used for at least three years prior to the date of this petition and has no intention of resuming use of, the Registrant's Mark for all of the goods listed in Registration No. 1,489,345 and has abandoned Registrant's Mark.

4. Because the Examining Attorney has concluded that Petitioner's **TERRAIN** mark and Registrant's Mark are similar in sight, sound, and meaning and that the goods covered by Petitioner's Application and the goods covered by Registration No. 1,489,345 are related, and on such basis has refused registration of Petitioner's Application, Petitioner will be damaged by the continuing existence on the Principal Register of Registrant's Mark as it will prevent Petitioner from obtaining a registration for its **TERRAIN** mark and the legal benefits attendant thereto.

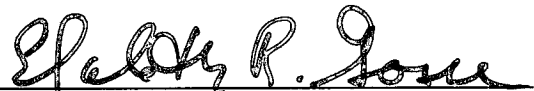
WHEREFORE, Petitioner hereby respectfully requests that Registration No. 1,489,345 be canceled.

Please charge any necessary fee regarding this Petition to the Deposit Account of Townsend and Townsend and Crew LLP, 20-1430, and credit any overpayment to such deposit account.

Respectfully submitted,

TOWNSEND *and* TOWNSEND *and* CREW LLP

Dated: March 27, 2006



Elizabeth R. Gosse  
*Attorneys for Petitioner*

Two Embarcadero Center, 8th Floor  
San Francisco, California 94111-3834  
Telephone: (415) 576-0200  
Facsimile: (415) 576-0300  
60726735 v1